REMARKS

This paper responds to the *Office Action* dated August 21, 2009.

Claims 1, 6, 14, 17, and 18 are amended. Claims 10, 22, and 26 are canceled. Claims 29-31 are added. As a result, claims 1-9, 11-21, 22-25, and 27-31 are now pending in this application.

Support for the amendments can be found in at least paragraphs [0013] and [0017]-[0018] of Applicant's specification. Support for the new claims can be found in at least paragraphs [0019]-[0024] of Applicant's specification.

§ *103 Rejection of the Claims*

Claims 1-28[1] were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,954,757 B2 to Zargham et al. (*Zargham*) in view of U.S. Patent No. 6,081,807 to Story et al. (*Story*). Although Applicants respectfully traverse, independent claims 1, 6, 14, and 18 are amended to expedite prosecution of this application. Applicant submits that the amended claims are non-obvious over the above-mentioned references.

1) *The Applicable Law*

As discussed in KSR International Co. v. Teleflex Inc. et al. (U.S. 2007), the determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on factual evidence. [2] The legal conclusion, that a claim is obvious within § 103(a), depends on at least four underlying factual issues set forth in Graham v. John Deere Co. of Kansas City[3]: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations.

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[1] The Examiner asserted that only claims 1-25 were rejected under 35 U.S.C. § 103(a) (see *Office Action* at page 2), but Applicant notes that the Examiner provided arguments for a rejection under § 103(a) of claims 26-28 as well (see *Office Action* at pages 16-18). As such, Applicant assumes the Examiner meant to assert that claims 1-28 were rejected under § 103(a).

[2] See *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 7, 1336-37 (Fed. Cir. 2005).

[3] 383 U.S. 1, 17 (1966).

KSR v. Teleflex provides a tripartite test to evaluate obviousness. "A rationale to support a conclusion that a claim would have been obvious is that ***all the claimed elements were known*** in the prior art and one skilled in the art could have combined the elements as claimed by known methods ***with no change in their respective functions***, and ***the combination would have yielded nothing more than predictable results*** to one of ordinary skill in the art."[4]

2) *Application of § 103 to the Rejected Claims*

As will be fully explained below, the cited references neither teach nor suggest all of the claimed elements of amended independent claims 1, 6, 14, and 18. Therefore, for at least these reasons, independent claims 1, 6, 14, and 18, and their respective claims, are patentable.

At least some of the limitations recited in the independent claims are not disclosed by the cited references

Independent claim 1, as amended, recites "initiat[ing]," by "one or more of a plurality of [application server] instances,...registering or reregistering of instance-specific information with the message server upon starting or restarting, respectively, of the message server . . . the instance-specific information including a confirmation of a connection between one or more of the plurality of [application server] instances and the message server."

The Examiner cited col. 13, lines 66-68[5] of *Zargham* for the proposition that *Zargham* discloses a portion of this limitation, specifically "registering each application server with the messaging server," as recited, for example, in examined dependent claim 22, which Applicant has canceled without prejudice. The cited portion of *Zargham* discloses a "message store function" that "supports the EAI platform for ZLE-based publish and subscribe operations (that are explained in more detailed *(sic)* in the aforementioned related copending U.S. application Ser. No. 10/013,091, entitled 'ZLE Enriched Publish/Subscribe' [*Carr*])."[6] *Carr* discloses the following:

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[4] See *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007)). Emphasis added.
[5] The Examiner cited col. 13, lines 66-68 of *Zargham* for the asserted proposition; however, each column of *Zargham* has just 67 lines. However, based on the text quoted by the Examiner, Applicant assumes the Examiner meant to cite *Zargham*, col. 13, lines 66-77 through col. 14, lines 1-3.
[6] *Zargham*, col. 13, lines 66-67 through col. 14, lines 1-3.

> The ZLE hub is pre-configured to know what sets of information these applications need as each legacy application identifies the events, type(s) of data changes and associated information in which it is interested. The legacy application then registers this request with a ZLE enriched publish-subscribe service provider module. The ZLE enriched publish-subscribe service provider module stores this pre-configured information request in the operational data store. When a new business event such as a new order arrives at the ZLE, the ZLE hub writes this information into the operational data store. This action in turn triggers an indication that some applications are subscribing to that event.[7]

Thus, *Zargham*, by reference to *Carr*, merely discloses a publish-subscribe model of message delivery wherein an application subscribes, through a publish-subscribe service provider, to a publication of information that it is interested in receiving. In turn, the storage of such information in a database triggers the publication of the information to the application.

There are at least three differences between the *Zargham* disclosure and the above-quoted elements of independent claim 1. First, *Zargham* discloses that ***the entity requesting the subscription is an application***; in other words, ***the entity requesting the subscription is not an application server instance.*** Second, *Zargham* discloses that ***the application optionally subscribes to information that it is interested in***; in other words, ***the application does not register or reregister with the publish-subscribe service provider module upon a starting or restarting of the publish-subscribe service provider.*** Third, *Zargham* discloses that ***the application registers a request with the publish-subscribe service provider to receive publication of a particular type of information; the application does not register a confirmation of a connection between the application and the publish-subscribe service provider.*** Therefore, *Zargham* does not disclose "initiat[ing]," by "one or more of a plurality of [application server] instances," a "registering or reregistering of instance-specific information with the message server upon a starting or restarting, respectively, of the message server . . . the instance-specific information including a confirmation of a connection between one or more of the plurality of [application server] instances and the message server" as recited in independent claim 1.

[7] *Carr*, paragraph [0090].

The Examiner conceded that *Zargham* does not disclose the following claim limitations: "a message server having no persistent state such that the message server can be restarted after a failure without performing state recovery operations,"[8] "a messaging service having no persistent state,"[9] and "means for performing centralized inter instances communication without maintenance of persistent state information."[10] However, in support of the § 103(a) rejections, the Examiner asserted that, because Story teaches a "stateless server,"[11] *Story* discloses these limitations. *Story* is directed to "a method and apparatus for interfacing with a stateless NFS (Network File System) server.[12] To that end, Story discloses the following:

> "a 'pseudo-open' state is created for a file when a request for accessing the file is received in a network server from a network client. The term pseudo-open relates to a set of data that is kept in a network server. The pseudo-open data describes the state of a file being currently accessed via an NFS server in the network server. In a preferred embodiment, the pseudo-open data is kept partially by a file system and partially by a disk process. The pseudo-open data differs from normal file state data in that it can be created or recreated at will, thus preserving the stateless functionality of the NFS server. Thus, if a request from the network client is received by the network server at any time and there is no pseudo-open state established for the file, the pseudo-open state will be established or reestablished by the file system at that time. If, on the other hand, a request from the network client is received for which a pseudo-open state already exists, the overhead of creating the pseudo-open state is avoided, and the existing data is used."[13]

However, *Story* does not disclose any of the elements of amended independent claim 1 that, as described above, *Zargham* fails to disclose. First, *Story* discloses that ***the entity requesting access to the file is a network client***; in other words, ***the entity requesting access to the file is not an application server instance.*** Second, *Story* discloses that ***the pseudo-open data is created whenever there is no pseudo-open state established for the file***; in other words, ***the pseudo open data is not created upon the starting or restarting of a server.*** Third, *Story*

[8] *Office Action* at page 3.
[9] *Id.* at pages 6 and 13.
[10] *Id.* at page 10.
[11] *Id.* at pages 3, 6, 7, 10, 11, 13, and 14.
[12] *Story* at Abstract.
[13] *Story*, col. 2, lines 21-38.

discloses that ***the pseudo-open data describes the state of a file being currently accessed*** via an NFS server in the network server; in other words, ***the pseudo-open data does not include a confirmation of a connection between an entity and a server.***

Therefore, like *Zargham*, *Story* does not disclose "initiat[ing]," by "one or more of a plurality of [application server] instances . . . registering or reregistering of instance-specific information with the message server upon a starting or restarting, respectively, of the message server . . . the instance-specific information including a confirmation of a connection between one or more of the plurality of [application server] instances and the message server" as recited in independent claim 1.

As neither of the references teaches nor suggests the claim limitations discussed above, no combination of the references can provide these claim elements. It is therefore submitted that independent claim 1 is non-obvious under the guidance of *KSR*. Independent claims 6, 14, and 18 recite claims limitations similar or analogous to those discussed above with respect to claim 1, and it is thus submitted that these claims are also non-obvious. In addition, any claim depending from a non-obvious independent claim is also non-obvious.[14] Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-9, 11-21, 22-25, 27, and 281 under 35 U.S.C. § 103(a).

[14] *See* MPEP § 2143.03.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 660-2016 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 9 day of November, 2009.

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